

**ENTERED**

March 05, 2020

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

ERNESTO BENAVIDES, JR.,  
Petitioner,

v.

LORIE DAVIS, Director, Texas  
Department of Criminal Justice,  
Correctional Institutions Division,  
Respondent.

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Civil Action No. 1:20-cv-00010

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Before the Court is the "Magistrate Judge's Report and Recommendation" ("R&R") (Docket No. 5) in the above-captioned case. The R&R recommended the Court dismiss Ernesto Benavides Jr.'s ("Petitioner") "Petition for a Writ of Habeas Corpus by a Person in State Custody" ("Petition") (Docket No. 1) and decline to issue a certificate of appealability. Objections were due February 7, 2020. Petitioner filed his out-of-time objections on February 10, 2020.

Before filing a successive 28 U.S.C. § 2254 petition, Petitioner must receive authorization from the Fifth Circuit. 28 U.S.C. § 2244(3)(A). This is the third § 2254 petition that Petitioner has filed. *See Benavides v. Davis*, Civil Action No. 1:15-cv-00181, 2016 WL 4800879 (S.D. Tex. Sept. 14, 2016); *Benavides v. Davis*, Civil Action No. 1:18-cv-00202, 2019 WL 1255197 (S.D. Tex. Mar. 19, 2019). And the Fifth Circuit denied Petitioner's request for authorization. *See In Re Ernesto Benavides, Jr.*, No. 19-40291 (Per Curiam Order dated May 17, 2019). Thus, Petitioner's third successive § 2254 petition cannot proceed.

After a *de novo* review of the record, the R&R (Docket No. 5) is **ADOPTED**. Petitioner's Petition (Docket No. 1) is **DISMISSED WITHOUT PREJUDICE** and the Court **DECLINES** to issue a certificate of appealability. The Clerk of the Court is **ORDERED** to close this case.

Signed on this 5th day of March, 2020.

  
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Rolando Olvera  
United States District Judge